

**OFFICIAL INFORMATION\*\*CONFIDENTIAL\*\*EVIDENCE CODE SECTION 1040  
INTRADEPARTMENTAL CORRESPONDENCE**

DATE: March 19, 2020

TO: Honorable Board of Police Commissioners

FROM: Inspector General

SUBJECT: OFFICER-INVOLVED SHOOTING 016-19 FOR 3/31/20 CLOSED-SESSION AGENDA

<u>Division</u>	<u>Date</u>	<u>Time</u>	<u>Duty-On (X) Off ()</u>	<u>Uniform-Yes (X) No ()</u>
Southeast	4/22/19	6:45 a.m.		

<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
Tahuite, B./PO II	2 years, 6 months
Do, A./POII	1 year, 7 months

**Total Involved Officer(s)**

2 x PO II

<u>Suspect</u>	<u>Deceased (X)</u>	<u>Wounded ()</u>	<u>Non-Hit ()</u>
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David Flores: Male Hispanic, 36 years of age.

**COP Recommendations**

**Tactics** – Tactical Debrief, Officers Tahuite and Do.

**Drawing/Exhibiting** – In Policy, No Further Action, Officers Tahuite and Do.

**Lethal Use of Force** – In Policy, No Further Action, Officers Tahuite and Do.

**IG Recommendations**

**Tactics** – Same as COP.

**Drawing/Exhibiting** – Same as COP.

**Lethal Use of Force** – Same as COP.

## **Table of Contents**

I.	Investigation	
i.	Annotated Force Investigation Division (FID) Incident Summary	p. 3
II.	Chief of Police Report	
i.	Chief of Police Findings	p. 24
ii.	Chief of Police Analysis	p. 24
III.	Inspector General Review	
i.	Inspector General Analysis	p. 42
ii.	Inspector General Recommendations	p. 42

## **INVESTIGATION**

### **Synopsis**

**Synopsis:** On Monday, April 22, 2019, at approximately 0639 hours, officers assigned to Southeast Patrol Division (SOE) responded to multiple radio calls of a male suspect armed with a pistol. As the officers attempted to contact the suspect, he produced a handgun and fired one round at the officers resulting in an Officer-Involved Shooting (OIS).

### **Annotated Force Investigation Division (FID) Incident Summary<sup>1</sup>**

On Monday, April 22, 2019, Police Officers II Bryan Tahuite, Serial No. 42780, (driver) and Andrew Do, Serial No. 43209, were assigned to Unit 18A97.<sup>2</sup> The officers were driving a marked black and white Ford Explorer Police Interceptor Sport Utility Vehicle (SUV), equipped with a Digital In-Car Video System (DICVS) and ballistic door panels, Shop No. 81396.<sup>3</sup> At approximately 0620 hours, Officers Tahuite and Do were completing administrative tasks when they were directed by Sergeant I Jeremy Ortiz, Serial No. 36127, Watch Commander, SOE, to remain logged on and available for radio calls.

At 0639:30 hours, Officers Tahuite and Do were in their vehicle performing a log off procedure but planned on re-logging on as partners. As Officer Tahuite's original partner had gone end of watch, this procedure was necessary to ensure Communications Division (CD) was furnished with the correct information regarding which officers were assigned to 18A97. As they were doing so, CD broadcast, "Southeast Units 415 Man with a Gun at Gardena and Denver, Gardena and Denver,

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<sup>1</sup> The Incident Summary presented here is reproduced from FID's report regarding this case, and is supplemented with annotations by the OIG. All OIG annotations are referenced as an "OIG Note." All other references and citations in the reproduced FID Incident Summary (e.g., Investigators' Notes or Addenda Items) are reproduced directly from FID's report. Unless otherwise stated, all information provided in OIG annotations is derived from FID's investigation of this incident.

<sup>2</sup> Officer Tahuite's original partner at the start of watch had to leave early for a pre-arranged family obligation. Therefore, Officer Do, who had initially been assigned to Kit Room, was partnered with Officer Tahuite near the end of their shift. It was the first time the officers worked with one another and they were only together for approximately one hour when they received the radio call of a Man with a Gun. Although they had not yet discussed tactics, both officers stated that it is common practice for the driver to act as the contact officer and the passenger to act as the cover officer.

<sup>3</sup> Officer Tahuite, two years, six months with the Department, 24 years of age, five feet, nine inches tall, 205 pounds. Officer Do, one year, seven months with the Department, 28 years of age, six feet tall, 200 pounds. Officers Tahuite and Do were both wearing ballistic vests and had Department-approved handguns, canisters of Oleoresin Capsicum (OC) spray, handcuffs and TASERS attached to their Sam Browne equipment belts. Both officers had their Hobble Restraint Devices (HRD) and their Department-approved Pelican Model 7060 Flashlights in their pants pocket. Both officers' side-handle batons were in their vehicle.

near the intersection. The suspect is the son, male Hispanic 35 years, white shirt and tan pants under the influence of narcotics. Code Three, Incident 818, in RD 1881.”<sup>4</sup>

Officer Do then broadcast, “18A97 from Southeast station.” Officers Tahuite and Do responded Code-Three and activated their Body Worn Video (BWV).

As the officers were responding to the call, they discussed their plans, tactics and the availability of less lethal weapons. Officer Do stated that one of his primary duties was to consolidate and interpret the information being received from the multiple radio calls and updates that were being transmitted. He would then voice that information to his partner so that they knew who they were looking for and where to search for the suspect.

***OIG Note No. 1: See FID’s Supplemental Report for additional information regarding the officers’ activities while en route to the call.***<sup>5</sup>

**Multiple 9-1-1 calls were being generated by witnesses in the area. The following is a summary of those calls with brief statements from the witnesses.**

Isidro Flores was at work when he received a phone call from one of his sons, Eric Flores, advising that David Flores, also Isidro’s son, was armed with a gun and had possibly shot himself inside their apartment.<sup>6</sup> Isidro Flores immediately returned to his residence at 16717 South Denver Avenue, Apartment No. 1, Los Angeles. Once inside the apartment, Isidro observed that his son David was armed with a handgun. He determined that David had not shot himself, but was agitated, hallucinating and making incoherent statements. Isidro attempted to calm David down but was unsuccessful. David then fired several rounds inside the apartment and fled on foot with the gun in his hand. Isidro directed Eric to follow David, while he called 9-1-1. According to Isidro, “I told him, check make sure he doesn’t do anything stupid over there. And he went over there after him. Then at the gas station he said he was -- walking over there back and forth.”<sup>7</sup>

Witness Johnny Watts resided at 522 West 168<sup>th</sup> Street. At approximately 0630 hours, Watts was preparing to leave his residence when he heard a gunshot followed by the screams of a female. He looked out his front door and observed a Hispanic male, wearing black pants, running east toward Figueroa Street. He believed a female had been shot and dialed 9-1-1. At 0640:00 hours, CD broadcast, “Southeast Unit shooting just occurred. 522 West 168<sup>th</sup> Street, 522 West 168<sup>th</sup> Street. Across the street for the location. Last seen two minutes ago running northbound Figueroa toward the Chevron Gas Station. Also, suspect is a male, Hispanic 45-50 years, wearing white muscle shirt,

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<sup>4</sup> Officers Tahuite and Do were unable to re-log on due to Communication Division’s broadcast.

<sup>5</sup> FID’s Supplemental Report is included at page 23 of this report.

<sup>6</sup> David Flores, six feet tall, 210 pounds, 36 years of age.

<sup>7</sup> D. Flores, Page 9, Lines 2-4.

one shot heard, possible .45 caliber, female heard screams, unknown if victim is down. Code Three, Incident 820, RD 1891. Southeast Unit handling identify."

Witness Felicia Nash was in her residence at 16723 South Denver Avenue, Apartment No. 4, when she heard yelling followed by three to four gunshots emitting from the apartment building at 16717 South Denver Avenue. She looked outside her living room window and observed her neighbor, Eric Flores, riding away on his bicycle north on Denver Avenue. A short time later she saw David Flores run south on Denver Avenue with a handgun in his right hand. She heard more gunshots and then dialed 9-1-1.

At 0640:30 hours, CD broadcast, "Southeast Unit 18A97, 18A97, your 415 Man with a Gun is now a shooting just occurred, better location of 16717 Denver Avenue. Suspect is a male Hispanic wearing a white shirt, light gray or light blue jeans, armed with unknown type handgun, was last seen running toward 168<sup>th</sup>. Fired three to four shots, an additional male Hispanic, possible -- possibly his brother, suspect father is standing out front of the residence, the apartment building wearing a red baseball cap, red shirt, red and white jacket with blue jeans blue or black jeans. Additional on incident 818." Officer Do acknowledged the updated broadcasts via the radio.

As the calls for service were being transmitted, the following Los Angeles Police Department (LAPD) uniformed personnel responded to the scene:

**Southeast Patrol Division:**

- Sergeant I Erin Gabaldon, Serial No. 35126, Unit 18L30W2;
- Sergeant I Arnold Castellanos, Serial No. 40202, Unit 18L50W3;
- Sergeant I Gabriel Ruiz, Serial No. 37408, 18L80W3;
- Police Officer III William Niemeyer, Serial No. 37973, and Police Officer I Alfred Foca, Serial No. 43683, Unit 18A63W3;
- Police Officers II Colin Cooper, Serial No. 42929, and Daniel Pina, Serial No. 38594, Unit 18A41W3;
- Police Officer III Derrick Ybarra, Serial No. 36360, and Police Officer I David Skotte, Serial No. 43709, Unit 18A3W3;
- Police Officer III Andrew Jenkins, Serial No. 40039, and Police Officer I Richard Podkowski, Serial No. 43618, Unit 18A49W3;
- Police Officers II Min Chun, Serial No. 41798, and Ron Rojo, Serial No. 42958, Unit 18X95W3.

At 0641:30 hours, CD broadcast the following updates, "18A97, 18A97 additional on your 415 Man with a Gun, he was last seen on Figueroa and 168<sup>th</sup> Street, near the liquor store. Additional Incident 818."

At 0641:40 hours, CD broadcast, "Southeast Units ADW Suspect There Now, Figueroa and Gardena on the west side of the street by the apartments, Incident 0824, RD 1881, Stand by for additional."<sup>8</sup>

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<sup>8</sup> ADW is an acronym for Assault with a Deadly Weapon.

At 0642:00 hours, CD broadcast, "Southeast Units, 415 Man with a Gun and a Knife Gardena and Figueroa, Incident 823, RD 1891, Suspect is a male Hispanic, white shirt and black pants, stand by for additional." CD further advised that a supervisor was responding.

At 0643:10 hours, CD broadcast, "All Southeast Units on ADW Suspect There Now Figueroa and Gardena. Suspect is a male Hispanic, 30 years wearing a white shirt, black pants, armed with a black handgun in his right hand, Incident 0824."

Meanwhile, Witness Nassar Ayad, an employee of First-Choice Liquor Store, located at 457 West Gardena Boulevard, was in the parking lot of the store sitting inside his blue SUV. Ayad was waiting for his supervisor to arrive to open the liquor store when David Flores approached his driver side door with a pistol in his right hand and knife in his left. This encounter was captured on security surveillance video.

**Note:** Video surveillance from the liquor store depicted Ayad and D. Flores having a brief conversation, then Flores walked away from Ayad. Ayad denied knowing whether David Flores was armed with a gun or knife, but the surveillance video from the liquor store clearly depicted Flores holding the weapons.

At 0643:40, CD broadcast, "Southeast Units, 18A97, 18A97, Suspect has assaulted somebody inside a blue Toyota SUV, is now walking away from that location. Stand by for additional." Followed by, "18A97 per the suspect's father, he's at Gardena and Figueroa at the Chevron gas station."

Witness Antonio Caballero was driving his vehicle north on Figueroa Street when he observed a male Hispanic armed with a handgun walking north in the middle lanes of Figueroa Street toward the Sinclair gas station. Caballero dialed 9-1-1 and provided CD with the information. At 0644:20 hours, CD broadcast, "Any Southeast Unit, 415-man with a gun in the area of Figueroa and Albertoni at the Arco and Sinclair gas station in the middle of the street. Subject is a male Hispanic, wearing a white T-shirt, Dickies pants, armed with a handgun, PR no longer has a visual, Code 2, Incident 839."<sup>9</sup>

At 0645:30 hours, Officer Tahuite turned east on Gardena Boulevard from Vermont Avenue and drove toward the Chevron gas station. Officers Do's BWV depicted him reading out loud the comments of the calls from their Mobile Data Computer.<sup>10</sup>

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<sup>9</sup> Witness Caballero provided the wrong cross street. Albertoni Street is several blocks south of Gardena Boulevard.

<sup>10</sup> Gleaned from Officer Do's BWV.

At 0645:40 hours, Officer Jenkins and Podkowski, Unit 18A49, broadcast they were at scene. Officer Do broadcast, "Ditto." He did so to notify the other responding units that he and Officer Tahuite had also arrived at scene.

**Note:** Officers Jenkins and Podkowski were in the area 168<sup>th</sup> Street and Figueroa Street at the time of the OIS.

At 0646:01 hours, Officer Tahuite slowed the police vehicle as they neared the Chevron gas station, located at 16503 South Figueroa Street. He observed a Hispanic male matching the description of the suspect, later identified as David Flores, standing on the southwest corner of the intersection of Figueroa and Gardena Boulevard. Officer Tahuite immediately alerted Officer Do of his observations and stated, "Hey, hey he's right there partner!"<sup>11</sup> According to Officer Tahuite, he observed the suspect holding a handgun with his right hand. He immediately stopped their vehicle to afford themselves distance and cover. The officers stopped in the number one lane facing east approximately 40 feet west of Suspect Flores. Officer Tahuite immediately exited his vehicle, unholstered his pistol and took a position of cover behind the driver side door.

At 0646:04 hours, as Officer Do was exiting the vehicle, his BWV depicted him ordering Suspect Flores to get on the ground. Flores moved to a nearby light pole and used it as cover. Flores then raised his handgun with his right hand, aimed and fired one round at the officers. The bullet struck the passenger side door of the police vehicle. In immediate defense of their lives, both officers immediately and simultaneously returned gunfire.

Officer Tahuite maintained a position of cover behind the driver side door, assumed a two-handed grip on his firearm, aimed at Suspect Flores and fired one round. Tahuite quickly assessed and determined his single round had not stopped Flores. Officer Tahuite then fired four additional rounds in rapid succession at Suspect Flores. All of Tahuite's rounds were fired in a southeasterly direction from an approximate distance of 46 feet. Officer Tahuite stated, "I popped out and I used my door as cover and immediately drew out. At this point I see that the suspect has the gun pretty much pointed away from us close to his chest, not pointed at us. At this point I observe the suspect kind of use -- use the post as cover. He leans on his right shoulder area and he points the gun out."<sup>12</sup>

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<sup>11</sup> Gleaned from Officer Tahuite and Do's BWV.

<sup>12</sup> Tahuite, Page 9, Lines 4-10.



***David Flores taking a position of cover near the light pole***

Officer Do also observed Suspect Flores standing on the southwest corner armed with a handgun. As soon as their vehicle came to a stop, Officer Do exited the passenger door and took a position of cover behind it. He immediately unholstered his pistol, assumed a two-handed grip on his firearm, aimed at Flores and fired four rounds in rapid succession in a southeasterly direction. All of Do's rounds were fired from an approximate distance of 41 feet. Officer Do stated, "He was on, I believe, the south side of the light pole facing westbound in our direction, and he was raising his gun up as we approached. As I was opening the door and getting out of the car, he started shooting at us."<sup>13</sup>

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<sup>13</sup> Do, Page 9, Lines 16-21.





***Officer Do's BWV depicting D. Flores pointing his handgun toward officers.***

Suspect Flores was struck by several rounds. He fell to the ground with the handgun still in his hand. Officer Do's BWV depicts Flores laying on his left side with his backside facing the officers. Flores then fully extended his right arm up and backwards, aiming the handgun toward the officers. In response, Officer Do aimed his pistol at Flores and fired one additional round in a southeasterly direction from an approximate distance of 41 feet. Suspect Flores was struck by the gunfire and stopped pointing his gun at the officers.

**Note:** According to Officer Do, he stopped firing as Flores was falling onto the ground. "When he started falling to the ground, I stopped shooting. And when he fell to the ground, I had my gun pointed at him, but I did not shoot."<sup>14</sup> "My recollection is still the same. I only shot when I perceived him as a threat."<sup>15</sup>

<sup>14</sup> Do, 1st interview, Page 28, Lines 4-7.

<sup>15</sup> *Id.*, 3rd interview, Page 5, Lines 18-19.



***Officer Do's BWV depicting D. Flores pointing his handgun toward officers.***

**Note:** Shortly after the OIS, Officer Do's BWV depicts Eric Flores approach on his bicycle and yell, "That's my brother!" Officer Do ordered him to get back. Eric Flores complied.

At approximately 0646 hours, Officer Tahuite broadcast an Officer Needs Help call. He advised that shots had been fired and directed units to respond east on Gardena from Denver Street. Officers Tahuite and Do maintained their positions of cover behind their doors and waited for additional officers to arrive. Meanwhile, Officer Do repeatedly ordered Suspect Flores to drop the gun. David Flores eventually complied and threw his handgun and knife several feet north of his location.

According to Witness Melissa Ramos, she was stopped at a red tri-light traffic signal facing north on Figueroa Street at Gardena Boulevard. She observed Suspect Flores raise his right arm while holding a pistol in his right hand and fire one round at the officers, Witness Ramos stated, "At that time, the only -- he only shot that once...He keeps the gun up and then the other officer shot him back."<sup>16</sup>

Witness Raymundo Vasquez was at the Chevron gas station pumping gas into his vehicle and observed Suspect Flores armed with a gun and shooting at the officers. Witness Vasquez stated, "I saw it was a gun. Like, he pulled it out. Once he pulled it out, he started shooting. I heard shots, because I saw the cops pull over in the middle of the street, and then they started shooting."<sup>17</sup>

<sup>16</sup> Ramos, Page 14, Lines 1-6.

<sup>17</sup> Vasquez, Page 3, Lines 18-22.

Witness Miguel Cazares-Santos was also at the Chevron gas station pumping gas when he was alerted to a male walking around with a gun and knife and called 9-1-1. While on the phone with the emergency operator, he observed police officers arrive and witnessed Flores point the gun at them. Within moments the officers fired their pistols at Flores. Witness Cazares-Santos stated, "I decided to -- to call 9-1-1. And when I was talking on the phone, the -- the police that got there first, I mean, the officer, he pulled over. As soon as he pulled over and he got out -- out of the car, he told the guy in the white T-shirt and -- and black pants, he told him to put the weapon down. So, the first thing that the guy did, he pointed the gun at the officer. He pointed the gun and -- that's when everything went off like the -- the cop shot him."<sup>18</sup>

At approximately 0646 hours, Officers Niemeyer and Foca were driving to the call. They were traveling east on Gardena Boulevard and were a short distance behind Officers Tahuite and Do. As they neared Figueroa Street, Officer Niemeyer observed Suspect Flores walking south and crossing the street in front of Officers Do and Tahuite. Officer Niemeyer pointed Flores' location out to his partner and the OIS occurred moments later. Officer Niemeyer parked directly behind Officers Tahuite and Do, exited his vehicle and approached them. Officer Niemeyer formulated a tactical plan that included, cover officers, less lethal options and an arrest team. Once a team of officers was assembled and duties assigned they approached, handcuffed and searched Flores for additional weapons.<sup>19</sup>

Officer Niemeyer stated, "I observed the suspect -- I observed a person matching the suspect description. I could see a white shirt and dark jeans, and I pointed that out to -- pointed that out to my partner and gave him a direction. And I physically pointed to him where the suspect was. As my partner and I arrived at scene -- as we were arriving, I heard one gunshot followed by a series of gunshots and I saw Officer Do discharging his firearm at the -- at the suspect. As we were getting close, just prior to the shooting, I could see the -- I could see the suspect armed with what I believed was a firearm, and he was turning towards Officer Do. And it was in his right hand and it was coming up."<sup>20</sup>

At 0648:30 hours, Officer Ybarra requested a Rescue Ambulance (RA) respond to the scene. At 0648:49 hours, Officer Niemeyer's BWV depicted him broadcast a Code-Four at Figueroa Street and Gardena Boulevard and further advised that the suspect was in custody.<sup>21</sup>

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<sup>18</sup> Cazares-Santos, Page 5, Line 20 – Page 6, Line 4.

<sup>19</sup> Officer Foca's BWV depicts Officer Jenkins place his right foot on top of Suspect Flores' handgun while the arrest team was handcuffing him. Officer Jenkins right foot was on the grip of the pistol from 0648:14 hours to 0649:02 hours, a total of 48 seconds. The estimated time was gleaned from synchronizing Officers Jenkins and Foca's BWV. The investigation revealed Officer Jenkins did not move the gun with his foot, but merely placed his foot on it. He then continued to guard Flores' pistol until relieved by FID.

<sup>20</sup> Niemeyer, Page 7, Line 14 – Page 8, Line 3.

<sup>21</sup> A review of CD recordings revealed that Officer Niemeyer's Code Four broadcast was not recorded.

Maintaining the role as the Incident Commander (IC), Officer Niemeyer identified the involved officers as Officer Tahuite and Do and advised them to stand by their vehicle until a supervisor arrived

At approximately 0648:50 hours, Sergeant Castellanos arrived and broadcast he was at scene. He was briefed by Officer Niemeyer and then began to monitor the involved officers. At approximately 0650 hours, Sergeant Castellanos obtained separate Public Safety Statements (PSS) from Officers Do and Tahuite.

At approximately 0652 hours, Sergeant Ruiz arrived at scene and was advised by Sergeant Castellanos that he had obtained the PSS from the officers involved and was given Officer Do's BWV camera. At approximately 0654 hours, Sergeant Ruiz began to monitor Officer Do (Investigators' Note No. 2).

At approximately 0652:43 hours, Sergeant Gabaldon arrived and broadcast she was at scene. At 0654:30 hours, she was briefed by Officer Niemeyer, assumed the role of IC and began to manage the scene. (Addenda Nos. 2, and 3).

At approximately 0710 hours, Los Angeles Fire Department (LAFD), RA No. 79, staffed by Firefighter/ Paramedic (FF/PM) George Anderson, Serial No. 43352, and Donte Montgomery, Serial No. 55638, responded to the OIS. Firefighter/ Paramedic Anderson determined Suspect Flores was dead at the scene. Los Angeles County Coroner Investigator Stacey Gadson, Serial No. 534662, responded to the scene and completed her on-scene investigation. At approximately 0712 hours, Police Officer III Adan Urena, Serial No. 37460, Department Operations Center (DOC), was notified of the Categorical Use of Force (Addendum No. 4).

Detective II Dimitri Kort, Serial No. 34872, was the first FID representative to arrive at scene at 0800 hours.

### **Scene Description**

The OIS occurred at approximately 0645 hours, at the southwest corner of Gardena Boulevard and Figueroa Street in the City of Los Angeles. The weather conditions were clear and sunny. The intersection is a major thoroughfare controlled by four-way traffic lights. A Chevron gas station is located at the southwest corner of the intersection. A permanent and stationary light pole is located on the same corner. A Sinclair gas station is located at the northwest corner of the intersection. Located at the northeast corner of the intersection was First Choice Liquor Store. The liquor store was closed at the time of the OIS. Las Islas Marias Restaurant was located at the southeast corner of the intersection. The restaurant was closed at the time of the OIS.

### **Canvass for Witnesses**

Investigators assigned to FID canvassed the area of Gardena Boulevard and Figueroa Street for witnesses on the day of the incident and then again on April 25, 2019 and

May 15, 2019. Unless otherwise noted, the statements of all witnesses were recorded, transcribed and are contained in this report.

Seven witnesses from the Chevron gas station and three from the Sinclair gas station were identified and interviewed by FID detectives. Eight other witnesses from the surrounding area were interviewed and stated they observed Suspect Flores throwing the handgun onto the street after the OIS. All the witnesses reported observing Flores with the pistol in his hand. A total of twenty additional witnesses interviewed by FID detectives advised they only heard gunshots and did not observe the OIS. The number of gunshots heard by those witnesses ranged from one to ten. Copies of their Heard Only Statement Forms are in the FID casebook. All interviews were recorded and uploaded into Training Evaluation and Management System (TEAMS II).

### **Suspect Information**



**David Flores**, was a male Hispanic, with black hair and brown eyes. At the time of the incident, Flores was six feet tall, weighed approximately 210 pounds and had a date of birth of February 2, 1983. He was identified by California Identification and Index (CII) No. A29228991 and Federal Bureau of Investigation (FBI) No. 474311WC6. Flores had a criminal history that included convictions for Arson, Possession of Narcotics and Domestic Battery. (Addendum No. 5).

On August 8, 2012, Los Angeles County Mental Health personnel placed Flores on a mental evaluation hold when he threatened to jump out of a window (LAPD Incident No. 120808001992).

Flores had two prior LAPD Mental Evaluation Unit (MEU) entries. The first occurred on July 20, 2014, when he was placed on a 72-hour hold for being a danger to himself (MEU Case No. 3094229). Flores' second MEU contact occurred on January 27, 2015, when he was placed on an additional 72-Hour Hold for reportedly having suicidal thoughts and suffering from bipolar issues (MEU Case No. 3373613).

On April 23, 2019, Detective II Paul Inabu, Serial No. 30286, FID, Criminal Apprehension Team (CAT), notified MEU that Flores was deceased (MEU Case No. 7181783).

On June 26, 2019, Erika Cruz, Flores' ex-wife and the mother of their two children, was interviewed by FID detectives. Cruz stated she divorced Flores in 2012. According to Cruz, in 2004, Flores was involved in a major traffic collision while racing with another vehicle resulting in serious injuries. Flores suffered massive injuries to the left side of his body that included a crushed pelvis, collapsed lung and his falling into a coma for approximately one month. Once he was released from the hospital, Flores received physical therapy but shortly after became depressed, started drinking alcohol in excess and became addicted to methamphetamines.

According to Cruz, one of Flores' drug convictions resulted in his being placed in a court mandated drug rehabilitation program. He stayed in the facility for one year. When he was released, the two reconciled but she did not allow him to move in with her for fear he would relapse. According to Cruz, a week before the OIS Flores sent her disturbing text messages expressing suicidal thoughts and stating that he did not want to live without her.

A historical report of calls for service at Flores' residence revealed there were 47 requests for the LAPD and/or LAFD at the location from July 30, 2010 to April 22, 2019 (Addendum No. 6).

The following calls were specifically associated with David Flores:

- 14 calls that Flores generated believing someone was going to harm him and his family;
- 6 calls indicating that Flores was going to harm or kill himself;
- 5 calls that Flores was armed with a pocket knife.

Firefighter/Paramedic George Anderson had numerous contacts with Flores in the past and recognized him when he arrived at scene. Anderson stated, "I'd say, approximate within a span of just five years that I've been here, I mean, I know I've probably responded on maybe 10 to 15 times. And it's always been an un-disturbing response, whether the parents aren't able to control him, you know, locking himself up in his room. I mean, from being combative on the incident, whether we have to use soft ties. I mean, it's always been an issue, especially when he -- you know, once he gets on drugs."<sup>22</sup>

## **Injuries**

No officers were not injured during the OIS.

## **Evidence**

At approximately 1120 hours, members of the Forensics Science Division (FSD), Firearms Analysis Unit (FAU) responded to the scene and conducted an examination of the OIS scene for ballistic impacts, trajectories and projectiles. Supervising Criminalists Nathan Cross, Serial No. N1541, and Julia Wilkinson, Serial No. N4403, Criminalist III Kathleen Hafeli, Serial No. N4216, and Criminalists II Brian Reinartz, Serial No. N5624, and Sabine Eichmann, Serial No. N4321, were all present. Their examination of the scene resulted in 43 items of evidence being recovered and booked. Included in those items were the passenger side front door and ballistic panel from Officers Do and Tahuite's police vehicle, Shop No. 81396 (Items No. 1 and 2), one 9mm Sig Sauer, Model P938, semiautomatic pistol (Item No. 3), one firearm magazine (Item No. 4), one live 9mm round (Item No. 5), two Discharged Cartridge Casing (DCC) (Item Nos. 6 and 9), one folding knife (Item No. 7) and one red t-shirt (Items No. 8).

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<sup>22</sup> Firefighter/Paramedic Anderson, Page 9, Line 18 – Page 10, Line 2.

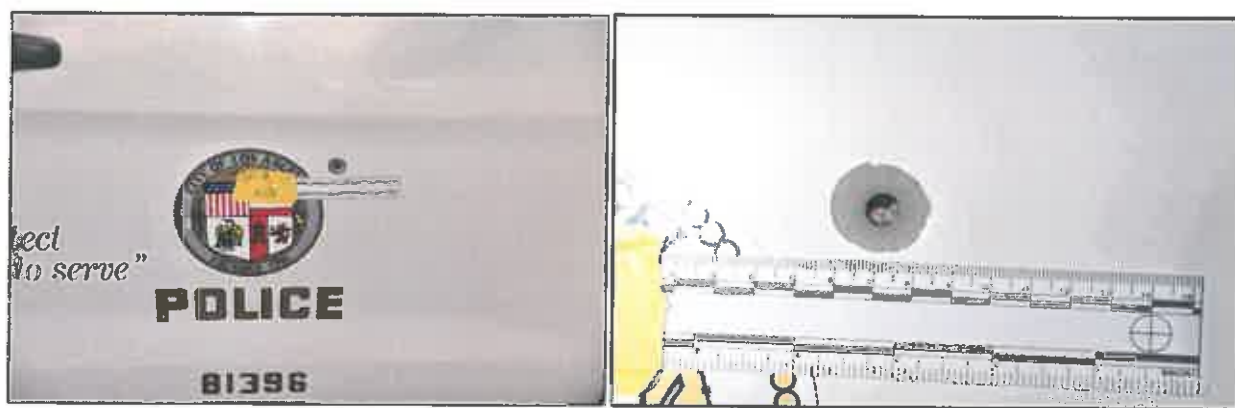


## **DNA**

Items Nos. 2 through 5 were swabbed and collected for Deoxyribonucleic acid (DNA). The items were not tested because BWV from Officer Do and Tahuite depicted D. Flores holding and throwing the pistol to the ground after the OIS. The swabs were booked into LAPD's Forensic Science Center property room as Items Nos. 29 through 31.

Item Nos. 6 and 9 were determined to have been fired from Suspect Flores' weapon. Item No. 6 was recovered on the east side of Gardena Boulevard, near the driveway of the Chevron gas station. Item No. 9 was collected from the west curb of Figueroa Street, in front of 523 168<sup>th</sup> Street, approximately one block south of the OIS location.

Also collected were; one live 9mm round belonging to Officer Podkowski (Item No. 10), five 9mm DCC belonging to Officer Do (Items No. 11 through 15), five .45 caliber DCC belonging to Officer Tahuite (Items No. 16 through 20), two bullet fragments recovered from the northbound lane of Figueroa Street and the parking lot of 444 West Gardena Boulevard (Items No. 21 and 22), five 9mm DCC collected inside Suspect Flores' residence at 16717 South Denver Avenue, Apartment No. 1 (Items 23 through 27).



***Bullet hole in front passenger door of LAPD Shop No. 81396***

On May 6, 2019, Criminalist Brian Reinartz collected Swabs of Deoxyribonucleic Acid (DNA) (Item Nos. 29 through 31) from Suspect Flores' weapon (Addenda Nos 7, 8, 9 and 10).

On May 7, 2019, Criminalists Brian Reinartz and Daniel Rubin, Serial No. G9077, FSD, FAU, responded to the Vehicle Print Shed at the C. Erwin *Piper Technical Center* and recovered bullet fragments from the passenger door of Officers Do and Tahuite's police vehicle (Item No. 28).

## **Coroner's Investigation**

### **Coroner's Response:**

On April 22, 2019, at 1229 hours, Coroner Investigator Gadson arrived at scene and conducted her field investigation. At 1521 hours, Los Angeles County Forensic Attendant Aisha Scott, Serial No. 509783, transported Flores' remains to the Los

Angeles County Forensic Science Center. On April 23, 2019, Investigator Gadson completed a County of Los Angeles, Department of Coroner Investigator's Narrative.

**Autopsy:**

On April 27, 2019, Deputy Medical Examiner Doctor Timothy F. Dutra, Los Angeles County Department of Coroner, performed a post mortem examination of Flores' remains. Detectives Il Kort and Guy Golan, Serial No. 38235, FID, and Senior Investigator Quinn Fenwick, Los Angeles County District Attorney's Office, were present during the examination. Doctor Dutra concluded Flores' death was caused by gunshot wounds to the torso and the manner of death to be Homicide. (Addenda Item Nos. 11, 12 and 13).

Doctor Dutra determined that Flores sustained eight gunshot wounds. The wounds were arbitrarily numbered:

**Gunshot Wound No. 1** entered the upper back. The bullet had a trajectory from back to front, leftward, forward and downward from an indeterminate range. The bullet exited through the front of the left shoulder.

**Gunshot Wound No. 2** entered through the back of the left shoulder. The bullet had a trajectory from back to front, rightward, forward and downward from an indeterminate range. The bullet exited through the left side of the chest.

**Gunshot Wound No. 3** entered the right buttock. The bullet had a trajectory from back to front, leftward, forward and from an indeterminate range. A deformed copper-jacketed, medium-caliber bullet was recovered within the pelvic area and submitted as evidence.

**Gunshot Wound No. 4** entered the left buttock. The bullet had a trajectory from back to front, downward and slightly forward. The bullet exited the buttock and re-entered through the left thigh and then exited the same thigh. Doctor Dutra determined this to be fragmentation of the bullet.

**Gunshot Wound No. 5** entered the upper left thigh at the junction of the scrotum from an indeterminate range. The bullet traveled backward, rightward and upward. Within the soft tissue of the right buttock, a deformed copper-jacketed, medium-caliber bullet was recovered and submitted as evidence.

**Gunshot Wound No. 6** entered the front of the left thigh from an indeterminate range. The bullet traveled downward, rightward and forward. The bullet exited at the rear of the left thigh. A fragment of the bullet's copper jacketing was recovered and submitted into evidence.

**Gunshot Wound No. 7** entered the front of the left calf from an indeterminate range. The bullet traveled leftward, backward and downward from an indeterminate range. The bullet exited the rear of the left calf.



**Gunshot Wound No. 8** was a possible grazing gunshot wound to the front of the shin and traveled either rightward or leftward from an indeterminate range. Doctor Dutra stated if this was not a gunshot injury, then it is a horizontal abrasion of other causation.

### **Coroner's Test Results:**

#### **Toxicology:**

On May 24, 2019, a Laboratory Summary Report was approved by Los Angeles County Department of Coroner, Supervising Criminalist I Sarah Buxton de Quintana, Serial No. 504261. The analysis results documented D. Flores had a Blood Alcohol Content (BAC) of .059g% (grams percent) and he tested positive for methamphetamines. This was determined from the blood recovered from Flores' chest cavity and was measured at 3.2 ug/mL (micrograms per gram).

On October 17, 2019, a Gunshot Residue (GSR) Analysis Report was completed by Los Angeles County Department of Coroner, Senior Criminalist Melvina Gin, Serial No. 635375. Criminalist Gin concluded the following, "The finding of the characteristic particles indicates that the decedent may have discharged a firearm, been in the vicinity of the discharge of a firearm or touched the surface with a gunshot residue on it" (Addendum No. 14).

### **Clothing Analysis**

Clothing analysis and distance determination tests were not required as the distance between the officers and Suspect Flores at the time of the OIS was easily estimated via video review to be approximately 41 to 46 feet. However, the evidence will be maintained in such a manner that testing may be conducted in the future if deemed necessary.

### **Weapons**



*Photographs of the knife and the pistol that D. Flores had in his possession at the time of the OIS*

**David Flores** was armed with a 9mm, Sig Sauer, Model P938, semiautomatic pistol, Serial No. 52B331173. The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives Tracing Center conducted a firearm Trace No. T20190143000.

The pistol was owned by Cliff Anson Wood from Neosho, Missouri and was not correctly reported stolen (Addenda Item Nos. 15, 16, and 17, Investigators' Note No. 3).

The pistol was rendered safe at scene by Criminalist Reinarz. The pistol was lying on its right side with the muzzle pointing southeast and the magazine fully inserted. The slide was locked back, the hammer was cocked and the safety was off. No ammunition or ammunition components were removed from the pistol or the magazine. (Addendum No. 18).

**Officer Do** was armed with a Department-issued 9mm, Smith and Wesson, M&P, semiautomatic pistol, Serial No. HTJ7356. According to Officer Do, at the time of the OIS the pistol was loaded to capacity with 17 rounds of Speer LE Gold Dot G2, 9mm LUGER, 147-grain, Department authorized ammunition in the magazine and one round in the firing chamber.

On April 22, 2019, Detective Kort conducted a post-incident examination of Officer Do's pistol. He determined the firearm was loaded with one round of Department-authorized ammunition in the firing chamber and 12 rounds in the magazine. Detective Kort inspected the two additional magazines Officer Do carried in his magazine pouches and determined both magazines were loaded to capacity with 17 rounds of Department-authorized ammunition. This information was consistent with Officer Do's statement and the physical evidence which indicated Officer Do fired a total of five rounds during the OIS (Addendum No. 19).

On May 22, 2019, Firearms Examiner Genaro Arredondo, Serial No. N4417, FSD, FAU, completed a report documenting the test-firing of Officer Do's pistol. The pistol's trigger pull value was within the Department's established specifications (Addendum No. 20).

Detective Kort verified Officer Do's pistol was entered into the Firearm Inventory Tracking System (FITS) on September 13, 2017.

**Officer Tahuite** was armed with a Department authorized .45 caliber, Glock, Model 21 semiautomatic pistol, Serial No. BHUP621. According to Officer Tahuite, at the time of the OIS the pistol was loaded to capacity with 13 rounds of ACP Federal Premium, .45 caliber, 230-grain HST, P45HST2, Department authorized ammunition in the magazine and one round in the firing chamber.

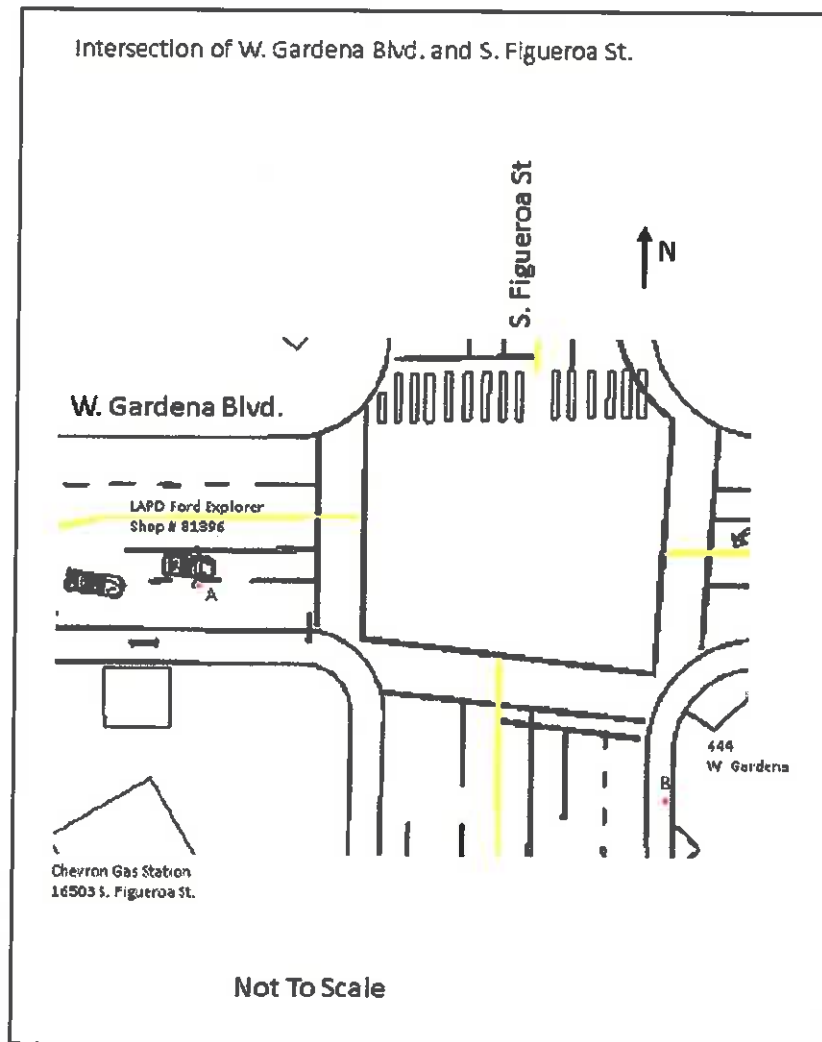
On April 22, 2019, Detective Kort conducted a post-incident examination of Officer Tahuite's pistol. He determined the firearm was loaded with one round of Department-authorized ammunition in the firing chamber and eight rounds in the magazine. Detective Kort inspected the two additional magazines Officer Tahuite carried in his magazine pouches and determined both magazines were loaded to capacity with 13 rounds of Department-authorized ammunition. This information was consistent with Officer Tahuite's statement and the physical evidence which indicated that Officer Tahuite fired a total of five rounds during the OIS

On June 24, 2019, Firearms Examiner Srinivasan Rathinam, Serial No. N3851, FSD, FAU, completed a report documenting the test-firing of Officer Tahuite's pistol. The pistol's trigger pull value was within the Department's established specifications (Addendum No. 21).

Detective Kort verified Officer Tahuite's pistol was entered into FITS on November 1, 2018.

### Firearms Analysis

Criminalist Reinarz completed a bullet path analysis of the penetrating impact located in LAPD Shop No. 81396. The analysis was consistent with a bullet travelling in a northwest direction. No further directions could be determined due to the condition of the impact. A non-penetrating impact, located on a brick half wall on South Figueroa Street, east of the OIS location, at 444 West Gardena Boulevard is consistent with a bullet traveling southeast and in a downward direction (Addendum No. 22).



*The above diagram depicts impact (B) from position (A).*

## Visual Documentation

### Digital In-Car Video System (DICVS)

Detectives from FID reviewed six DICVS.

Officer Tahuite's original partner on the night of the incident ended his shift early. As a result, Officer Do was taken from the kit room and reassigned to work with Officer Tahuite. The officers were in the process of logging back on to the DICVS when the radio call at Figueroa Street and Gardena Boulevard was broadcast. The officers immediately responded to the call. Having done so prior to the DICVS completing its rebooting cycle, the DICVS in Shop No. 81396 did not activate and received a shutdown command at 0628 hours.

Sergeant II Jason Liguori, Serial No. 36091, Information Technology Group (ITG), was consulted regarding this issue. He examined the DICVS log for Shop No. 81396 and determined that a data error occurred during the shutdown command, which caused an anomaly and prevented the system from recording during the emergency response. Sergeant Liguori further believes that the officer(s) did not do anything improper which would have caused the system to not record.

**Note:** Shop No. 81396 was examined and repaired by a COBAN technician and returned to SOE on July 2, 2019.

All officers listed below activated their DICVS as they were responding to the OIS and Help Call. All DICVS videos were reviewed by FID investigators. Except for Officer Niemeyer's vehicle, it was determined that no other DICVS recorded any portion of the OIS.

**Note:** Officers Niemeyer and Foca's DICVS recorded the faint audible sound of a gunshot at 0646:10 hours.

There are no concerns regarding the content on the officers DICVS. All DICVS recordings are on file at FID and in the COBAN system.

➤ Sergeant Castellanos	Shop No. 81602
➤ Sergeant Ruiz	Shop No. 81903
➤ Officers Niemeyer and Foca	Shop No. 89035
➤ Officers Jenkins and Podkowski	Shop No. 81306
➤ Officers Ybarra and Skotte	Shop No. 89123
➤ Officers Chung and Rojo	Shop No. 80747

### Body Worn Video

Force Investigation Division reviewed the BWV related to this incident. The investigation revealed 14 Southeast officers activated their BWV.

As previously documented, Officers Do and Tahuite activated their BWV in a timely manner and recorded the OIS.

Officers Niemeyer and Foca activated their BWV prior to the OIS. Their BWV recorded the audible sound of a gunshot at 0646:10 hours. Officers Niemeyer and Foca's BWV depicted Officer Niemeyer developing a tactical plan to handcuff Flores.

Officer Jenkins activated his BWV and it depicted him deploying his Police Rifle as part of the tactical plan to approach and handcuff Flores.

Officer Podkowski activated his BWV and it depicted him at 0647:21 hours, experiencing a weapon malfunction as he was holstering his pistol. Officer Podkowski performed a "tap and rack" and cleared the malfunction. He holstered his pistol and donned black latex gloves and handcuffed Flores.

All other officers arrived after the OIS and their BWV did not capture any part of the OIS.

### **Outside Video**

Force Investigation Division located surveillance video from the business located on all four corners of the intersection at Figueroa Street and Gardena Boulevard.

Surveillance video was collected from the Las Islas Marias Restaurant, located on the southeast corner of 444 West Gardena Boulevard. Force Investigation Division detectives collected video from three cameras that captured different angles of the suspect walking with a pistol in his right hand and the knife in his left hand. The camera labeled Channel 22, which was facing in a northwesterly direction, captured the OIS in its entirety. The video was stored under Control No. 744201.

Surveillance video was collected from the First Choice Liquor Store located on the northeast corner of Gardena Boulevard and Figueroa Street. At 0642:31 hours, the camera labeled Channel 13, which was facing in a southwesterly direction depicts Flores walking east and crossing Figueroa Street toward the liquor store with a pistol in his right hand and a knife in his left hand. Flores is depicted on Camera Channel 15 that was facing the east and recording the southside of the liquor store. Flores walked toward a Witness Nassar Ayad in a parked Jeep Cherokee. Flores had his pistol in his right hand and a knife in his left hand. Flores approached Nassar as he was sitting in the driver's seat of his vehicle. Flores appeared to have a brief conversation with Nassar and then walked away. The video was stored under Control No. 744200.

Surveillance video was collected from the Sinclair gas station located at 16435 South Figueroa Street at the northwest corner of the intersection Gardena Boulevard and Figueroa Street. At 0635:55 hours, camera Channel 7 depicted Flores walking north on Figueroa north of Gardena. Then at 0645:26 hours, Flores is depicted taking a position of cover behind a light pole at the southwest corner of Gardena and Figueroa. The cameras from the Sinclair gas station did not capture the OIS. The video was stored under Control No. 744202.

Surveillance video was collected from the Chevron gas station located at 16503 South Figueroa Street at the southwest corner of the intersection Gardena Boulevard and Figueroa Street. A camera that was angled toward the location of the OIS was partially

blocked by semi-truck parked at the gas station, therefore the OIS was not captured. Additional cameras depicted Officers Do and Tahuite driving their police vehicle toward the intersection. The videos were stored under Control Nos. 738899.

### **Social Media**

Personnel assigned to FID's Cyber Unit monitored social media sites, including YouTube, Facebook, Instagram and Twitter from the date of the incident until submission of this investigative report. No additional evidence, information or witnesses were identified. Media Relations Division (MRD) provided FID detectives with news reports from KABC, KCBS, KNBC and KTLA. The recordings are stored in the FID case book and under control No. 659428.

### **Photographs**

Photographer III Gary Baker, Seral No. N5831, Technical Investigation Division (TID) responded and photographed the OIS scene, the involved officers, associated evidence and Flores. The photographs are stored under Control Nos. D0769184, D0769185 and D0769255.

[...]

### **Investigators' Notes**

1. Officer Podkowski was assigned to the arrest team. Prior to Suspect Flores being taken into custody, Podkowski unintentionally induced a pistol malfunction while holstering his weapon. This occurred when the slide of his pistol encountered a portion of his holster causing the slide to move and lock slightly to the rear. This prevented Officer Podkowski from completely closing the "hood" of his retention holster. At that point, Podkowski unholstered and verified the condition of his pistol. Observing that the slide was partially ajar, he ensured his pistol was pointed toward the ground and in a safe direction and then conducted a "tap and rack" clearing procedure. This resulted in the live, chambered round being ejected on to the ground. The live round was appropriately left undisturbed and was later identified and documented by the crime scene manager. Lieutenant II James Antenucci, Serial No. 26784, FID, notified Captain Al Pasos, Serial No. 25501, Commanding Officer, Force Investigation Division (FID), of this incident. Captain Pasos then notified the Office of Operations (OO) and Operations South Bureau (OSB).
2. When Sergeant Ruiz arrived at scene he began to monitor Officer Do. Sergeant Ruiz' BWV recorded him asking Officer Do whether or not he had a chance to talk to his partner. This is significant because the role of the monitoring supervisor is to ensure that the involved officer(s) have no interaction with one another until deemed appropriate by FID personnel. Lieutenant Antenucci forwarded this concern to Captain Pasos, who then notified OO and OSB. A personnel complaint was generated regarding this statement and assigned CF No. 19-002386.

3. The pistol that Flores had in his possession was stolen from Stuttgart, AR. When reported stolen, the pistol model/serial number were incorrectly reported. Detectives assigned to FID were able to correctly identify and notify, Cliff Wood. Mr. Wood advised he would correct the error on the police report by contacting the local authorities in Stuttgart.

### **Supplemental FID Report<sup>23</sup>**

The following is an excerpt from the Investigative Summary of Force Investigation Division Report No. F016-19:

*As the officers were responding to the call, they discussed their plans, tactics and the availability of less lethal weapons. Officer Do stated that one of his primary duties was to consolidate and interpret the information being received from the multiple radio calls and updates that were being transmitted. He would then voice that information to his partner so that they knew who they were looking for and where to search for the suspect.*

Both officers were asked if there was any discussion regarding planning or tactics while they were enroute to the call. Neither officer recalled having such a discussion. According to Officer Do, he was "preoccupied" with consolidating and deciphering the numerous updates from Communications Division. He added that the way "we usually work," it's "assume[d]" the driver would act as contact and the passenger as cover.<sup>24</sup> Officer Tahuite also indicated there was no time for such discussion.

A review of the officers' Body Worn Video (BWV) revealed that the officers' interaction while enroute to the radio call included a discussion regarding the availability of less-lethal options and updates of the suspect's description and location. Officer Do asked Officer Tahuite, "We still have the 40 in the back?" Officer Tahuite responded, "Ah, yeah we do."<sup>25</sup> Additionally, Officer Do is heard clearing traffic, reading the comments of the call, giving directions and providing pertinent updated broadcast information to his partner.

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<sup>23</sup> On February 6, 2020, the Commanding Officer, Force Investigation Division issued a Supplemental Report regarding this case.

<sup>24</sup> Do, Page 13, Lines 1-19.

<sup>25</sup> Gleaned from Officer Tahuite's BWV.

## **CHIEF OF POLICE REPORT**<sup>26</sup>

### **Chief of Police Findings**

**Tactics** – Tactical Debrief, Officers Tahuite and Do.

**Drawing/Exhibiting** – In Policy, No Further Action, Officers Tahuite and Do.

**Lethal Use of Force** – In Policy, No Further Action, Officers Tahuite and Do.

### **Chief of Police Analysis**

#### **Detention**

- Officers Tahuite and Do responded to multiple radio calls of a man armed with a gun. As the officers approached, Officer Do consolidated the incoming information and verbally updated his partner, Officer Tahuite, with the suspect's description (later identified as Flores) and possible location. As the officers arrived in the area, they observed Flores, who was similarly described in the radio calls and Flores was in possession of a handgun. Flores took a barricaded position behind a large pole and assumed a shooting stance while pointing the handgun toward Officers Tahuite and Do. Flores fired his handgun at those officers, which resulted in an OIS. The officers' actions were appropriate and within Department policies and procedures.

#### **Tactics**

- Department policy relative to Tactical Debriefs is: *"The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance"* (Los Angeles Police Department Manual, Volume 3, Section 792.05).

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

#### **Tactical De-Escalation**

- *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

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<sup>26</sup> The information provided in this section summarizes the analysis and findings set forth in the Chief of Police's report for this case.



### Tactical De-Escalation Techniques

- **Planning**
- **Assessment**
- **Time**
- **Redeployment and/or Containment**
- **Other Resources**
- **Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)**

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, Officers Tahuite and Do responded to a radio call of a man with a gun, which was upgraded to a shooting just occurred as the officers were responding. Officer Tahuite believed that he and Officer Do needed to respond to the location because the community was in danger. As the officers arrived in the area, they observed Flores, as described in the radio calls, and in possession of a handgun. Flores took a position slightly behind a large pole and assumed a shooting stance while pointing the handgun toward Officers Tahuite and Do. Flores fired his handgun at the officers, striking the front passenger door of their police vehicle, which resulted in an OIS. The FID investigation revealed that only three seconds had elapsed between the time the officers had arrived and Flores' discharging of his handgun at the officers.

- **Planning** – Officer Tahuite's originally assigned partner received Watch Commander approval to leave early. Officers Tahuite and Do were assigned to work together approximately one hour prior to the end of their shift and had not previously worked together. Officer Tahuite was completing some Field Interview cards, Automated Field Data Reports, and other administrative duties. At approximately 0620 hours, Officers Tahuite and Do went to Tahuite's originally assigned police vehicle and decide they would log off and re-log on as partners if they had to respond to a radio call prior to the end of their shift.

Officer Tahuite said he was preparing to log them off when this radio call was broadcast at 0639 hours and had not yet discussed tactics with Officer Do; however, Officer Tahuite explained it was common practice for the driver to be the contact officer and the passenger to be the cover officer but the roles could switch. Officer Tahuite usually discussed tactics with all his new partners but had not expected that he and Officer Do would be going out in the field so close to the end of their shift.

As part of the planning process and while enroute to the radio call, Officer Do consolidated all the incoming updates and radio call information while his partner, Officer Tahuite, drove them to the general area where the radio calls were being

generated. Officer Do cleared intersections for Officer Tahuite in between filtering the numerous pieces of information as calls continued to be broadcast. Officer Do also verified with Officer Tahuite their less-lethal options while enroute to the call. As part of their contact and cover roles, Officer Tahuite alerted his partner of the possible suspect, stopped their police vehicle, and was preparing to direct Flores to drop the handgun when Flores fired a shot in the officers' direction. Officer Tahuite explained their roles as contact and cover officer switched at that point. Flores was closer to Officer Do's side, so Officer Do assumed the role of contact officer and gave Flores commands. Officer Tahuite then assumed the role of cover officer, broadcast a Help Call, began requesting resources over the radio, and communicated pertinent information for responding officers.

The UOFRB would have preferred these officers had discussed specific plans prior to engaging the suspect; however, the numerous calls for service broadcast by CD in multiple locations, along with the rapidly unfolding incident, limited Officers Do and Tahuite's ability to further plan and communicate with each other as they responded to the area. As part of the planning, Officer Do did a good job processing the information and relaying that information to his partner, and both officers continued to discuss the information while responding.

- **Assessment** – Officers Tahuite and Do began their initial assessment while driving to the radio call. Officer Do continued to review incoming information on Flores' description, movement, and possible locations.

Prior to arriving at the location, Officer Tahuite noted there were many people in the area which caused Officer Tahuite to fear that Flores might fire upon other people in the area based on the information received in the radio calls. Officer Do verbalized his assessments to Officer Tahuite and they began discussing potential gas station locations as they were closely approaching the area. Officer Tahuite observed Flores and made an assessment that Flores was the possible suspect who was generating the radio calls because Flores was armed with a handgun. Officer Do observed that Flores was holding a handgun in his right hand. Officer Do quickly assessed the need to immediately address the threat in order to safeguard the lives of the community since the radio calls had already indicated Flores may have fired the handgun.

Due to Flores' actions of taking a shooting position, Officer Tahuite estimated he stopped the police vehicle approximately 40 feet away. Officer's Tahuite and Do assessed Flores' actions, the background, and determined that Flores posed a threat of serious bodily injury or death to both the officers and the citizens in the area. Officer Do also recognized that a citizen was approaching the area on his bicycle and Officer Do quickly re-directed him out of the area.

The UOFRB noted that during the OIS, Officer's Do and Tahuite assessed that their initial rounds did not stop Flores' actions and responded with the minimal amount of additional lethal force to stop Flores.

The UOFRB noted that Officers Tahuite and Do stopped firing when Flores fell to the ground. Officer Do only fired when the suspect pointed the handgun again at Officer Do. Officer's Do and Tahuite utilized cover and had distance. Officer Tahuite was conscious of the early time of day and the emerging activity of other persons in the area. When Officer Tahuite fired his service pistol, he perceived that Flores' background did not contain any persons or vehicles; however, Officer Do's BWV depicts an intermittent flow of traffic behind Flores in the background.

- **Time** – Officers Tahuite and Do were faced with a rapidly escalating incident in which Flores' actions posed a deadly threat to the officers and citizens in the area. Officer's Do and Tahuite were immediately confronted by Flores who was clearly armed and fired the first shot within three seconds of the officer's arrival. Due to the immediacy of Flores' actions, the officers had limited opportunity to utilize time as a de-escalation technique in order to reduce the intensity of the encounter. Be that as it may, Officers Tahuite and Do stopped the police vehicle the moment they observed Flores, which afforded them some distance from Flores while still maintaining a line of sight. Officer Tahuite then utilized that distance, combined with the cover of the police vehicle's ballistic door, to provide time in which to utilize verbalization as a de-escalation tool and in an attempt to resolve the incident peacefully, without the use of any force. Officer Do also utilized that distance and verbalization as a de-escalation tool; however, Officer Do did not take full advantage of the police vehicle's ballistic door panel and was slightly offset to the right of the door.

After Flores discarded the handgun and knife, Officer Niemeyer, as the IC, recognized the opportunity to slow the pace of the officers' approach towards Flores so that an appropriate tactical plan could be developed and safely implemented.

- **Redeployment and/or Containment** – Officers Tahuite and Do approached the area and observed Flores armed with a handgun. The officers tactically parked their police vehicle and re-deployed from inside their vehicle into a position of cover, behind the vehicle's ballistic door panels. Officer Tahuite broadcast pertinent information regarding Flores' position and directions for responding units to safely contain the area and eliminate a possible crossfire or cross traffic situation.

Upon the arrival of additional officers, Officer Do re-deployed from his position behind the vehicle's ballistic door panel and become part of the tactical plan and arrest team. Officer Do was assigned as the designated cover officer in the arrest team in an effort to contain Flores, prevent Flores from further harming anyone, and to allow Flores to receive medical attention. Containment of the scene continued with the placement of crime scene tape and the tactical positioning of the police vehicles to control the flow of vehicular and pedestrian traffic.

- **Other Resources** – Officer Tahuite was aware that additional resources were enroute due to the number of units who Officer Tahuite heard broadcast their response. As soon as safely feasible, Officer Tahuite upgraded their incident to a Help Call providing for additional assistance and situational awareness of incoming personnel and associated agencies. Officer Tahuite requested the resource of a RA for Flores in conformance with the Department's policy on the preservation of human life. As the supervisor's arrived at the location and made assessments, the supervisors acquired additional resources as needed.
- **Lines of Communication** – The officers were responding to a rapidly unfolding incident and did not have time to discuss tactical roles but adhered to Departmental training. Officers Tahuite and Do communicated with each other as they responded to the radio call. Officer Do provided pertinent information on Flores' movements, updated locations, actions, and similar descriptions. Officer Do and Tahuite discussed the possible gas station location where Flores was last seen, as indicated in the radio calls, and while updates were continually broadcast.

While responding to the area, Officer Tahuite saw Flores and immediately notified his partner, Officer Do. The rapid nature of the incident limited Officers Tahuite's and Do's ability to establish lines of communication with Flores. Although the officers attempted to de-escalate Flores through communication efforts, Flores did not emit a verbal response and instead, pointed a handgun at the officers, and discharged a round. Officer Do continued to verbalize to Flores in an effort to gain Flores' compliance but Flores failed to drop the handgun as directed. Flores still provided no verbal response to the officers after falling to the ground but continued to move and point the handgun back at the officers, while Flores was facing away from the officers. After Flores discarded the knife and handgun, Officer Do attempted to provide clear directions to Flores in an effort to take Flores into custody. Officer Tahuite broadcast a Help Call over Southeast Area base frequency, provided important information to responding units, and requested additional resources.

Lastly, Officer Niemeyer communicated clear and concise instructions to the officers at scene while developing a tactical plan and forming an arrest team with designated roles. It was through this verbalization with the other officers that Officer Niemeyer was able to slow down the tempo of the incident to prevent any further risk of unnecessary harm to the community, the officers, and Flores.

The UOFRB determined, and the Chief concurred, that while Officers Tahuite and Do implemented elements of tactical de-escalation, the unprovoked and immediate actions of Flores limited the officers' ability to fully implement further de-escalation techniques.

During a review of the incident, the following Debriefing topics noted:

- **Debriefing Point No. 1    Tactical Planning/Communication**

*In order to ensure officer safety and help ensure an appropriate outcome, the primary officers and cover officers must effectively communicate with one another. Appropriate communication involves advising the primary officer of any critical occurrences or safety issues (California Commission on Peace Officers Standards and Training Learning, Domain No. 22).*

*Officers must approach every contact with officer safety in mind. Complacency, overconfidence, poor planning, or inappropriate positioning can leave officers vulnerable to attack (California Commission on Peace Officer Standards and Training, Learning Domain 21).*

Operational success is based on the ability of the officers to effectively communicate during critical incidents. The officers, when faced with a tactical incident, improve their overall safety by their ability to recognize an unsafe situation and work collectively to ensure a successful resolution. A sound tactical plan should be implemented to ensure minimal exposure to the officers, while keeping in mind officer safety concerns.

Officer Tahuite's partner was granted permission to leave early and Officer Do, who was assigned to the Kitroom that evening, was re-assigned to be Officer Tahuite's partner approximately an hour prior to their end of watch. Officer Tahuite said he was preparing to log them off when a radio call was broadcast in their area at 0639 hours. Officer Tahuite had not yet discussed tactics with Officer Do; however, he explained it was common practice for the driver to be the contact officer and the passenger to be the cover officer, but the roles could always be switched if needed. Officer Tahuite usually discussed tactics with all his new partners but hadn't expected he and Officer Do would be going out in the field so close to the end of their shift. In this case, Officers Tahuite and Do did not discuss a specific plan or communicate their tactical approach while responding to the radio call but rather, relied on traditional contact and cover roles with one another.

As part of their tactical planning and communication while enroute to the radio call, Officer Do consolidated all the incoming updates and radio call information and verbalized the information to Officer Tahuite. Officer Tahuite drove them to the general area where the radio calls were being generated. Officer Do cleared intersections for his partner in between filtering the numerous pieces of incoming information as the radio calls continued to be broadcast. Officer Do also verified their less-lethal options with Officer Tahuite while enroute to the call and discussed the businesses in the area where Flores had last been seen.

As part of their contact and cover roles, Officer Tahuite alerted his partner of the possible suspect (later identified as Flores), stopped their police vehicle and was preparing to direct Flores to drop the handgun when Flores fired a shot in the officers' direction. Officer Tahuite explained that their roles as contact and cover officer switched at this point. Flores was closer to Officer Do's side, so Officer Do assumed the role of contact officer and gave Flores commands. Officer Tahuite then assumed the role of cover officer, broadcast a Help Call, began requesting resources over the radio, and communicated pertinent information for responding officers.

The UOFRB noted that although their planning was limited, this was Officers Do and Tahuite's first time working together and they had been assigned as partners near the end of their watch. The numerous calls and updates were indicative that this incident was serious and rapidly evolving. This incident involved a "man with a gun" radio call with comments that Flores had fired rounds and was mobile. Due to the rapidly unfolding nature of this incident, the officers had limited time, which also limited their ability to further plan and communicate with each other as they were quickly responding to the area. The officers were immediately challenged by Flores and communicated their observations to each other. The UOFRB also noted there were no conflicting commands given by the officers to Flores.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that while identified as an area for improvement, Officer Do's and Tahuite's actions did not deviate from Department policy and training. The Chief will direct that this be a topic of discussion during the Tactical Debrief.

### **Additional Tactical Debrief Topics**

- **Profanity** – The investigation revealed that Officer Do used profanity while giving Flores commands. In addition, he utilized profanity when addressing a citizen that approached on a bicycle in the middle of the tactical incident. Officer Do indicated that his use of profanity was intended to establish greater command presence during the incident. The UOFRB considered Officer Do's level of stress and agitation after being fired upon and noted Officer Do's adjustment in his demeanor and discontinued use of profanity while directing Flores after the shooting concluded. Officer Do is reminded that the use of profanity may unnecessarily escalate the situation and is not in conformance with the Department's expectations of an officer's conduct. The Chief will direct this be a topic of discussion during the Tactical Debrief.

### **Command and Control**

- *Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure,*

*set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

*Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (Los Angeles Police Department, Training Bulletin, Volume XLVII Issue 4, July 2018).*

Officer Niemeyer arrived at the help call prior to the arrival of a supervisor. Officer Niemeyer took an active leadership role, initiated command and control, and formulated a tactical plan to effect the arrest of the suspect. In addition, Officer Niemeyer maintained the role as the Incident Commander (IC), identified the involved officers, and advised them to stand by their vehicle until a supervisor arrived. Officer Niemeyer continued to assess and coordinate resources at the scene until relieved by arriving supervisors. The UOFRB commented on Officer Niemeyer's strong leadership role, his calm demeanor, and clear direction provided to the other officers. In the Chief's overall assessment, Officer Niemeyer demonstrated active leadership and met the Chief's expectations of a senior officer at the scene of a critical incident.

Sergeant Castellanos responded to the scene and began to identify the officers that were involved in the use of lethal force. He immediately separated and monitored the involved officers and obtained a PSS from Officers Tahuite and Do but stopped when he realized both officers had fired shots. He recognized the need for an additional supervisor to assist with the separation and monitoring and made that request to the IC. Upon arrival of additional supervisors, Sergeant Castellanos handed custody of Officer Do and Do's BWV to Sergeant Ruiz. The actions of Sergeant Castellanos' actions were consistent with Department supervisory training and met the Chief's expectations of a field supervisor during a critical incident.

Sergeant Gabaldon responded to the scene and assumed the role of IC. Sergeant Gabaldon ensured that the crime scene was preserved and assessed and coordinated incoming resources. Sergeant Gabaldon's actions were consistent with Department supervisory training and met the Chief's expectations of a field supervisor during a critical incident.

Sergeant Ruiz responded to the scene and was directed by Sergeant Castellanos to monitor Officer Do. Sergeant Ruiz ensured Officer Do remained separated, monitored, and obtained a complete PSS from Officer Do.

**Note:** According to the FID investigation, when Sergeant Ruiz arrived at scene, he began to monitor Officer Do. Sergeant Ruiz' BWV recorded him asking Officer Do whether or not he had a chance to talk to his partner.

According to Officer Do, he did not speak with Officer Tahuite about the OIS prior to being interviewed by FID investigators.<sup>27</sup> By not speaking with each other, Officers Tahuite and Do maintained the integrity of the investigation and adhered to Department policy and procedure.

The Chief had significant concerns with Sergeant Ruiz' directions during this critical incident and determined that his actions were not consistent with Department policy, procedure, and provided supervisory training. Sergeant Ruiz did not meet the Chief's expectations of a field supervisor during a critical incident and as a result, Southeast Area's command has initiated a personnel complaint to further investigate the deviation from Department standards and the Chief's expectations of our employees.

### **Tactical Debrief**

- In conducting an objective assessment of this case, the UOFRB determined, and the Chief concurred, that Officers Tahuite and Do's tactics did not substantially deviate from approved Department policy and tactical training.

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Although, it was determined that Officers Niemeyer, Padowski, Jenkins, and Foca were not substantially involved in this incident and did not receive formal findings, Captain Tingirides recommended, and the UOFRB concurred, that they would benefit from attending the Tactical Debrief. The Chief concurred with those recommendations and therefore, will direct that Officers Niemeyer, Padowski, Jenkins, and Foca, along with Officers Tahuite and Do, attend a Tactical Debrief and that the specific identified topics be discussed.

**Note:** Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;

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<sup>27</sup> Special Order No. 11, dated June 15, 2016 – Obtaining a Public Safety Statement – Categorical Use of Force – Revised, was adopted by the Department on June 15, 2016.



- Equipment Required/Maintained;
- Radio and Tactical Communication (including Code Six);
- Tactical Planning;
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

### General Training Update (GTU)

- On May 14, 2019, Officers Tahuite and Do attended a GTU. All mandatory topics were covered, including Reverence for Human Life, Firearms, and Force Option Simulator.

### Drawing/Exhibiting

- Department policy relative to drawing and exhibiting a handgun is: *"An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified"* (Los Angeles Police Department Manual, Volume No. 1, Section 556.80).

According to Officer Do, as the officers approached Figueroa eastbound on Gardena, Officer Do observed Flores, who matched the description and was wearing a white shirt and dark pants. Flores was on the southwest corner of Gardena and Figueroa standing right next to a light pole. Officer Do observed Flores had a handgun in his hand and heard Officer Tahuite state, "That's him. That's him." When Flores noticed the officers, he took a position of cover on the south side of the light pole and raised his handgun up as the officers approached. Officer Do opened his passenger door and gave Flores commands to drop the handgun and get onto the ground. Fearing that deadly force would be necessary, Officer Do drew his service pistol.

Officer Do recalled, *"As we approached Figueroa eastbound on Gardena, my partner and I noticed a suspect that matched the description, white shirt, dark pants. My partner identified saying -- I believe he said, 'That's him. That's him.' My door was already partially opened. As I was stepping out of the car, I noticed the suspect on the southwest corner of Gardena and Figueroa. He had a gun in his hand. I don't remember which hand it was in. And he was right next to a light pole, I believe. So he was -- as he noticed us, he took a position of cover by the light pole. He was on, I believe, the south side of the light pole facing westbound in our direction, and he was raising his gun up as we approached. As I was opening the door and getting out of the car, he started shooting at us. At that point I exhibited and -- drew and exhibited my firearm due to the tactical situation and the likelihood of it escalating to the point where deadly force would be necessary or justified."*<sup>28</sup>

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<sup>28</sup> Do, 1<sup>st</sup> Interview, Page 9, Lines 5-25.

According to Officer Tahuite, as the officers approached eastbound from Denver and neared the Chevron Gas Station, he observed Flores, matching the description of the suspect, armed with a black handgun. Officer Tahuite observed that Flores was standing on the southwest corner near the light post. Officer Tahuite stopped immediately and advised Officer Do, "There he is. There he is." Officer Tahuite stopped their police vehicle approximately 30 feet away or two or three car lengths away from Flores. Officer Tahuite felt that having distance and cover was the best thing for the officers at the time. He popped out of his police vehicle, used his door as cover, and immediately drew out.

*Officer Tahuite recalled, "I observe a possible suspect matching the description and armed with a black handgun. At this point I stop immediately and advise my partner, "There he is. There he is." I parked the vehicle and I'm approximately 30 feet away, maybe two, three car lengths away. Due to him being armed with a gun, I felt that having distance and cover was the best thing for us to do at the time. We -- I popped out and I used my door as cover and immediately drew out. At this point I see that the suspect has the gun pretty much pointed away from us close to his chest, not pointed at us."*<sup>29</sup>

In this case, the UOFRB conducted a thorough review and evaluation of the reasonableness of Officers Tahuite and Do's Drawing/Exhibiting. The UOFRB noted that the officers had observed Flores was armed with a handgun and believed it reasonable for them to draw their service pistols.

As such, based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officers Tahuite and Do, while faced with similar circumstances, would reasonably believe that there was a substantial risk the situation may escalate to the point where deadly force may be justified.

Therefore, the Chief determined Officers Tahuite and Do's Drawing/Exhibiting to be In Policy, No Further Action.

### **Use of Force – General<sup>30</sup>**

- *It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:*
  - *Defend themselves;*
  - *Defend others;*
  - *Effect an arrest or detention;*

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<sup>29</sup> Tahuite, Page 8, Line 21 – Page 9, Line 7.

<sup>30</sup> Special Order No. 4, 2020 – Policy on the Use of Force - Revised, was adopted by the Department on February 5, 2020, after this incident occurred.

- Prevent escape; or,
- Overcome resistance (Los Angeles Police Department Manual, Volume 1, Section 556.10).

The Department examines reasonableness using *Graham v. Connor* and from the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:

- The seriousness of the crime or suspected offense;
- The level of threat or resistance presented by the subject;
- Whether the subject was posing an immediate threat to officers or a danger to the community;
- The potential for injury to citizens, officers or subjects;
- The risk or apparent attempt by the subject to escape;
- The conduct of the subject being confronted (as reasonably perceived by the officer at the time);
- The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;
- The availability of other resources;
- The training and experience of the officer;
- The proximity or access of weapons to the subject;
- Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,
- The environmental factors and/or other exigent circumstances. (Los Angeles Police Department Manual, Volume 1, Section 556.10)

### **Lethal Use of Force**

- Law enforcement officers are authorized to use deadly force to:
  - Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or,
  - Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or,
  - Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury (Los Angeles Police Department Manual, Volume No.1, Section 556.10).

- **Officer Tahuite** – .45 Caliber, five rounds in a southeasterly direction, in two volleys of fire, from an approximate distance of 46 feet.

### **Volley One**

Officer Tahuite observed that Flores held the handgun pointed away from the officers and close to Flores' chest. Officer Tahuite then observed that Flores used the post as cover, leaned against it with his right shoulder, and pointed the gun out with the muzzle pointed at the officers. Officer Tahuite did not recall seeing any people or vehicles behind Flores and attempted to shout, "Drop the gun," but it happened fast. Officer Tahuite then heard Officer Do giving Flores commands and observed Flores fire the handgun at the officers.<sup>31</sup> Officer Tahuite feared that he or Officer Do may be shot or killed so Officer Tahuite fired one round at Flores from his service pistol.

*Officer Tahuite recalled, "At this point I observe the suspect kind of use -- use the post as cover. He leans on his right shoulder area and he points the gun out... Now the muzzle is pointed at my partner and I. At this point I attempted to -- prior to him pointing... pointing that muzzle, I attempted to shout, "Drop the gun." And my partner also, I heard him say something. Not sure what. But it happened very quickly at this time. We did not have enough time to continue to give him commands and utilize less lethal options, such as OC, beanbag, or anything -- any other less lethal options or advise units that we were Code 6 on the suspect. Within that instant, like I said, he pulls the gun toward -- pointed at us -- the muzzle at us and at this point I believe he shot first or, you know, I'm not -- I'm not too sure, but I do believe that he shot at us, and at this point I shoot one round at the suspect. I was in fear that he was going to shoot us and kill us or hurt us."*<sup>32</sup>

### **Volley Two**

According to Officer Tahuite, after his first volley of fire, he assessed Flores' actions and believed that Flores was continuing to shoot at the officers. In addition to fearing for Officer Do's and his own safety, Officer Tahuite observed many people outside and feared Flores was going to start shooting other people. Officer Tahuite fired four additional rounds at Flores. Officer Tahuite stopped firing his service pistol when Officer Tahuite saw Flores collapse and stop shooting. Officer Tahuite was also able to see that Flores' handgun was in the slide lock position.

*Officer Tahuite recalled, "I realize that with one shot the suspect did not stop and continued to shoot at us. At this point I continued to shoot approximately four rounds. Five rounds in total until the suspect -- I observed him collapse and then he*

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<sup>31</sup> The FID investigation revealed that the bullet from Flores' handgun struck the passenger side door of the police vehicle.

<sup>32</sup> Tahuite, Page 9, Lines 7-10 and Line 15 – Page 10, Line 7.

*falls down to the ground, and at this point his gun is in the slide lock position. It was not in a slide lock position when we first made contact with him.*<sup>33</sup>

*I saw many people outside. So I feared that he was going to hurt us or start shooting other people as well.*<sup>34</sup>

According to Officer Tahuite, in response to FID's question regarding how many rounds he believed Flores had fired at the officers, Officer Tahuite stated "three."

- **Officer Do** – 9mm, Five rounds in a southeasterly direction, in two volleys of fire from an approximate distance of 41 feet.

### **Volley One**

As he was getting out of the car, Officer Do observed Flores start shooting at Officer Tahuite and himself. Officer Do heard more than one round being fired and observed Flores holding his handgun and shooting at the officers. Fearing for his life, Officer Do fired four to five rounds at Flores. Officer Do continued to fire because he observed Flores was still standing with his handgun pointed at the officers. Officer Do was concerned about possible injuries to Officer Tahuite or injuries that he, himself, might have incurred without noticing. Officer Do assessed between his rounds in his first volley of fire and believed Flores was still standing with the handgun pointed toward Officer Do.

Officer Do recalled, "*I heard a couple [rounds fired from Flores] ... I believe I heard more than one.*"<sup>35</sup>

*"And as soon as he started shooting at us, I was -- I deployed deadly force in order to protect myself and others from serious bodily injury or death... I believe I fired four to five rounds at the suspect. The suspect fell -- fell towards the street where he was still holding the gun. I ordered the suspect to drop the gun, which he eventually did so."*<sup>36</sup>

*"When he started falling to the ground, I stopped shooting. And when he fell to the ground, I had my gun pointed at him, but I did not shoot."*<sup>37</sup>

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<sup>33</sup> *Id.*, Page 10, Lines 14-21.

<sup>34</sup> *Id.*, Page 10, Lines 10-12.

<sup>35</sup> Do, 1<sup>st</sup> Interview, Page 19, Lines 4-10.

<sup>36</sup> *Id.*, Page 9 Line 5, and Page 10, Lines 1-8.

<sup>37</sup> *Id.*, Page 28, Lines 4-7.

## Volley Two

Officer Do observed that Flores was lying on the ground and the handgun was still in Flores' hand. Officer Do continued to perceive Flores as a threat because Flores still held the handgun. While on the ground Flores, continued to move a little bit, raised his right arm up, and pointed the handgun back towards Officer Do. Fearing for his safety, Officer Do fired one additional round at Flores to stop the lethal threat. Officer Do ordered Flores to drop the handgun. Flores eventually complied and threw the handgun and the knife in front of him.

Officer Do recalled, *"Through that process my -- I was concerned for possible injuries to my partner or I might have incurred without noticing, but that was in the back of my mind. My first primary concern was getting the gun out of his hand...He was lying on the ground on the street on Gardena. The gun was still in his hand. So I perceived him as still a threat, because he still held a deadly firearm in his hand."*<sup>38</sup>

*"I only shot when I still perceived him as a threat...When he was pointing the gun at me."*<sup>39</sup>

In this case, the UOFRB conducted a thorough review of the investigation and considered several factors in evaluating the reasonableness of Officer Tahuite and Do's use of lethal force. The UOFRB noted that the incident was dynamic and unfolded rapidly. Both officers were forced to make split-second decisions to protect themselves and citizens who were in the nearby area from Flores who presented a deadly threat. Flores was armed with a handgun and upon the arrival of Officers Tahuite and Do to his location, leaned against a light pole. Both Officers Tahuite and Do opined that Flores was using the light pole as cover. Flores fired his handgun at the officers, striking their police vehicle on the front passenger door. Officer Tahuite, in fear for his life and for the life of Officer Do, fired his service pistol at Flores. While continuing to assess, Officer Tahuite additionally feared for the safety of citizens in the area, and again fired his service pistol. Officer Do perceived that Flores was firing at both Officers Do and Tahuite; therefore, Officer Do fired his service pistol at Flores. Officer Do continued to assess and perceived that Flores was still pointing his handgun at Officer Do. Officer Do fired his service pistol to protect his own life.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officers Tahuite and Do, would reasonably believe Flores' actions presented an imminent threat of death or serious bodily injury and that the use of lethal force would be objectively reasonable.

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<sup>38</sup> *Id.*, Page 28, Lines 10-21.

<sup>39</sup> Do, 3<sup>rd</sup> Interview, Page 5, Lines 19 and 23.

Therefore, the Chief found Officers Tahuite and Do's Use of Lethal Force to be In Policy, No Further Action.

### **Additional/Equipment**

- **Patrol Rifle Deployment** – The investigation revealed that Officer A. Jenkins, Serial No. 40039, Southeast Patrol Division, had his Patrol Rifle slung for approximately four minutes after the suspect was handcuffed and a Code Four was obtained at the location. In addition, while his Police Rifle was deployed, Officer Jenkins gave multiple directions to other officers, drew his hand-held radio to broadcast on Southeast base frequency, and met with a field supervisor from the Los Angeles County Sheriff's Department. Officer Jenkins is reminded to safely secure the Patrol Rifle in his police vehicle as soon as practical and upon conclusion of its tactical necessity in accordance with Departmental Drawing and Exhibiting policy.

Captain E. Tingirides, Serial No. 31546, Commanding Officer, Southeast Patrol Division, advised that this issue was addressed with Officer Jenkins through divisional counseling and a Supervisory Action Item (SAI) was created. The Commanding Officer of Operations South Bureau (OSB) and the Director of the Office of Operations (OO) concurred with this action. As such, the Chief deemed no further action is necessary.

- **Firearm Manipulations** – The FID investigation revealed that Officer R. Podkowski, Serial No. 43618, Southeast Patrol Division, inadvertently induced a weapon's malfunction when holstering his service pistol. This occurred when the slide of his service pistol encountered a portion of his holster causing the slide to move slightly to the rear. This prevented Officer Podkowski from properly securing his handgun because the retention holster did not completely close. Observing the slide was out of battery, Officer Podkowski had to perform a clearance procedure, causing a round to eject. The round was appropriately left untouched for FID investigators. Officer Podkowski acknowledged that this was the second incident in which he had caused the slide of his handgun to go out of battery. He had a prior occurrence in an unrelated incident in which he induced the same malfunction. Officer Podkowski is reminded of the importance of maintaining a level of familiarity with his service pistol and related equipment.

Captain Tingirides advised that this issue was addressed with Officer Podkowski through divisional counseling and a SAI was generated. Additionally, Officer Podkowski's holster was inspected by Department training personnel and the required adjustments were made. The Commanding Officer of OSB and the Director of OO concurred with this action. As such, the Chief is directing that Officer Podkowski receive additional training with regard to properly holstering his handgun to enhance future performance.

- **Preservation of Evidence** – The FID investigation revealed that Officer Jenkins placed his foot on the grip of Flores' handgun as the officers approached to handcuff Flores. Officer Jenkins did not move the handgun with his foot; however, his foot

remained on the handgun for an approximate 48 seconds. After removing his foot, Officer Jenkins remained and continued to guard the handgun as evidence. Officer Jenkins is reminded of the importance of the preservation of evidence. The Chief will direct this be a topic of discussion during the Tactical Debrief. Captain Tingirides advised that this issue was addressed through divisional counseling. The Commanding Officer of OSB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

- **Utilization of Cover** – The investigation revealed that Officer Do did not fully utilize his police vehicle's ballistic door panel when involved in the OIS with Flores. Officer Do positioned himself slightly offset to the right of the door. To give himself additional time if needed, Officer Niemeyer parked behind Officer's Do and Tahuite's police vehicle. At this time, Flores had fallen to the ground and thrown both his handgun and knife in front of himself. Officer Niemeyer moved from his police vehicle to Officer Do's police vehicle to verify if Officer Do had been injured and to provide assistance to Officer Do if needed. Officer Niemeyer requested additional officers over to respond to Officer Do's side of the police vehicle to discuss a tactical plan, assign roles, and to put together an arrest team, which required they be in close proximity to each other to hear and receive instructions. Officers Niemeyer, Foca, and Jenkins, positioned themselves to the right of Officer Do. Officers Do, Niemeyer, Foca, and Jenkins did not utilize all available cover, which left them exposed. Officers are reminded that the police vehicles are equipped with ballistic door panels to provide a safe barrier between themselves and suspects. The Chief would have preferred that an additional police vehicle was moved into position to provide cover or to maximize the use of the entire available ballistic door panel as cover. In an effort to enhance future tactical performance, the Chief will direct that this topic be discussed during the Tactical Debrief. Captain Tingirides advised that this issue was addressed through divisional counseling. The Commanding Officer of OSB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.
- **Digital In-Car Video System (DICVS) Activation** – It was noted in the FID investigation that Officer Tahuite's original partner on the night of the incident had ended his shift early. As a result, Officer Do was taken from the Kitroom and reassigned to work with Officer Tahuite. The officers were in the process of logging back on to the DICVS in Shop No. 81396 when the radio call at Figueroa Street and Gardena Boulevard was broadcast. The officers immediately responded to the call, having done so prior to the DICVS completing its rebooting cycle. The DICVS in Shop No. 81396 did not activate and received a shutdown command at 0628 hours. Sergeant Jason Liguori, Serial No. 36091, Information Technology Group, examined the DICVS log for Shop No. 81396 and determined that a data error occurred during the shutdown command, which caused an anomaly and prevented the system from recording during the emergency response. Sergeant Liguori further believes that the officer(s) did not do anything improper which would have caused the system to not record.
- **BWV Activation** – The investigation revealed that Officer Do had a late BWV activation, which was activated during his Code Three response. He powered it on



and activated it while responding Code Three to the radio call as the primary unit. Officer Do's BWV captured the OIS in its entirety. Upon notification of this issue, Captain Tingirides investigated the matter and advised that Officer Do was assigned as the Kitroom Officer and was later partnered with Officer Tahuite to handle radio calls until Day Watch came down from roll call. Officer Do believed he was going end of watch and had powered down his BWV at the station in preparation. Captain Tingirides advised there were no prior incidents of late activation. This issue was addressed with Officer Do through divisional counseling documented on a Comment Card and the generation of a SAI. The Commanding Officer of OSB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

- **Profanity** – The investigation revealed that Officers Jenkins and Podkowski utilized profanity during the incident. In conducting an analysis, Captain Tingirides determined the profanity did not occur in the presence of other citizens. Captain Tingirides advised that this issue was addressed through divisional counseling. The Commanding Officer of OSB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

#### **Audio/Video Recordings**

- **BWV** – Southeast Patrol Division personnel were equipped with BWV at the time of the incident. Officers Tahuite and Do's BWV captured their arrival, Flores taking a position behind the pole, pointing a handgun at the officers and the subsequent OIS in its entirety.
- **DICVS** – Southeast Patrol Division vehicles were equipped with DICVS. Officers Tahuite and Do's vehicle's DICVS was inoperable and did not capture the OIS. Officers Niemeyer and Foca's DICVS captured audio of the OIS.
- **Outside Video** – Surveillance video from area businesses captured different angles of Flores walking with a handgun in his right hand and a knife in his left hand. Surveillance video also captured Flores making contact with Witness Ayad. A camera facing in a northwesterly direction captured the OIS.

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## **INSPECTOR GENERAL REVIEW**

### **Inspector General Analysis**

#### **Investigation Quality**

- No significant issues of concern were identified in relation to investigation quality.

#### **Training Issues**

- No significant issues of concern were identified in relation to training.

#### **Equipment Issues**

- No significant issues of concern were identified in relation to equipment.

#### **Detention**

- The OIG concurs with the Chief's analysis.

#### **Tactical De-Escalation**

- The OIG concurs with the Chief's analysis.

### **Inspector General Recommendations**

#### **Tactics**

- The OIG concurs with the Chief's findings.

#### **Drawing and Exhibiting**

- The OIG concurs with the Chief's findings.

#### **Lethal Use of Force**

- The OIG concurs with the Chief's findings.



MARK P. SMITH  
Inspector General